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Attorney for Defendant  
James Damaso

**FILED**  
DISTRICT COURT OF GUAM  
JUN 12 2006  
MARY L.M. MORAN  
CLERK OF COURT

IN THE UNITED STATES DISTRICT COURT  
FOR THE TERRITORY OF GUAM

UNITED STATES OF AMERICA,	)	CR 06-00005
	)	
vs.	)	RESPONSE TO DRAFT PRESENTENCE
	)	REPORT
JAMES RUMBAUDA DAMASO,	)	
	)	
	)	
_____	)	

**RESPONSE TO DRAFT PRESENTENCE REPORT**

Defendant, James Damaso, by and through counsel, James J. McHugh, Jr., Assistant Federal Defender, respectfully objects to the draft Presentence Report.

Paragraph 26: The draft Presentence Report calculates the starting base offense level under USSG §2K2.1(4) as twenty. The defendant submits that the starting offense level should be fourteen. The Department of Probation relies on the controlled substance conviction described in paragraph 38 of the draft Presentence Report. However, this conviction is for possession of a controlled substance. Application Note 1 to USSG §2K2.1 states that for

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purposes of that section "controlled substance offense" has the meaning given that term in USSG §4B1.2(b) and Application Note 1 of the Commentary to §4B1.2. Section 4B1.2(b) defines the term "controlled substance offense" as "an offense under federal or state law, punishable by imprisonment for a term exceeding one year, that prohibits the manufacture, import, export, distribution, or dispensing of a controlled substance (or counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with intent to manufacture, import, export, distribute, or dispense."


Defendant Damaso's prior narcotics conviction was a 3rd Degree Felony of simple possession of a controlled substance. This conviction does not fit within the definition of a "controlled substance offense" described at USSG §4B1.2(b) and therefore under USSG §2K2.1(6) defendant's base offense level is fourteen.

Paragraph 31: The defendant objects to the Adjusted Offense Level (subtotal): Twenty-two. For the reasons discussed above defendant's base offense level is 14 therefore the Adjusted Offense Level should be sixteen.

Paragraph 33: The defendant objects to the Total Offense Level: Nineteen. For the reasons discussed above the Total Offense Level should be thirteen.

Paragraph 64: Guideline Provisions: Based on Total Offense Level of 13 and Criminal History Category III, the guideline range for imprisonment should be 18 to 24 months and not 37 to 46 months.

DATED: Mongmong, Guam, June 6, 2006.

  
JAMES J. McHUGH, Jr.  
Attorney for Defendant  
James Damaso

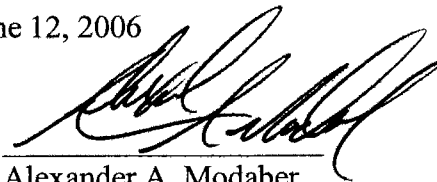
**CERTIFICATE OF SERVICE**

I, Alexander A. Modaber, hereby certify that a true and exact copy of the foregoing document was duly mailed and/or hand delivered to the following on June 12, 2006:

Russell C. Stoddard  
Assistant United States Attorney  
United States Attorney District of Guam  
Sirena Plaza, Suite 500  
108 Hernan Cortez  
Agana, Guam 96910

Stephen P. Guilliot  
U.S. Probation Officer  
U.S. Probation Office  
District of Guam and NMI  
2<sup>nd</sup> Floor, U.S. Courthouse

Dated: Mongmong, Guam June 12, 2006

A handwritten signature in black ink, appearing to read 'Alex Modaber', written over a horizontal line.

Alexander A. Modaber  
Investigator  
Federal Public Defender of Guam  
First Hawaiian Bank Building  
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